NO. 81-2146

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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JAMES S. SINGLETON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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ROGER S. HANSON, ESQ.
518 South Broadway
Santa Ana, California 92701
(714) 558-0921
Attorney for Petitioner
James S. Singleton
Member of the Bar
United States Supreme Court

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Pursuant to Rule 21, Petitioner asserts:

(A) The questions presented for review are:

1. Whether, within the meaning of United States v. Maze, 414 U.S. 395, 94 S. Ct. 645, 38 L.Ed. 2d 603 (1974) and Kann v. United States, 323 U.S. 88, 65 S. Ct. 148, 89 L.Ed 88 (1944), and in contrast to United States v. Giovengo, 637 F.2d 941 (3rd Cir. 1980), did the use of interstate wire communication via airline ticket reservation computers constitute any relation to the scheme of fraud perpetrated by petitioner so as to bring his conduct within the statute, 18 U.S.C. 1341 and 2? and, alternately,

2. Whether, within the facts of this case, petitioner had successfully completed his fraudulent scheme upon either reselling the stolen tickets to the airline or selling them to unsuspecting victims for cash, long before and quite apart from any use of airline

computers by the victims to book passage on a flight so as to cause the commission of solely a State of Hawaii state fraud violation having nothing to do with a Federal violation of 18 U.S.C. 1343 and 2?

3. Whether the use of trained marijuana detector dogs to perform warrantless searches of briefcases violates the reasonable expectation of privacy afforded by this Honorable Court in United States v. Chadwick, 433 U.S. 1, Arkansas v. Sanders, 442 U.S. 753, and Robbins v. California, ___U.S.___.

(B) The parties to the proceeding in the U.S. 9th Circuit are solely the petitioner, James S. Singleton, and the respondent, United States of America.

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TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

JAMES S. SINGLETON, petitioner, herein seeks the Grant of Certiorari to review the decision of the United States Court of Appeals for the 9th Circuit entered January 28, 1982 affirming his conviction of 5 counts of fraud by interstate wire, 18 U.S.C. 1343 and 18 U.S.C. 2, suffered in the District of Hawaii.

Dated this 5th day of May, 1982, at Santa Ana, Central District of California 92701.

Respectfully submitted,

ROGER B. HANSON, ESQ.
Member of Bar
U.S. Supreme Court
Attorney for Petitioner

## (D) OFFICIAL/UNOFFICIAL REPORTS OF THE U.S. 9TH CIRCUIT

The decision of the U.S. 9th Circuit affirming petitioner's conviction was filed January 28, 1982 as an unpublished decision. It is attached to this petition as Appendix "A". An Order denying Rehearing and Suggestion for Hearing En Banc was entered March 16, 1982. It is attached to this petition as Appendix "B".

## (E) GROUNDS FOR JURISDICTION

Petitioner was indicted and prosecuted in the U.S. District Court, Honolulu, Hawaii on 6 counts of 18 U.S.C. 1343 and 2 and convicted of 5 of those counts. He was acquitted on one count.

Jurisdiction to review the decision of the U.S. 9th Circuit by Petition for Certiorari is predicated on 28 U.S.C. 1254(1.)

## (F) CONSTITUTIONAL PROVISIONS AND UNITED STATES STATUTES INVOLVED

### FOURTH AMENDMENT

### SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## FIFTH AMENDMENT

**CAPITOL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War of public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. 1341

FRAUDS AND SWINDLES

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, furnish or procure for unlawful use any counterfeit or spurious coin , obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to

whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, Stat. 763; May 24 1949, c. 139 § 34, 63 Stat. 94.

## 18 U.S.C. 1343
## FRAUD BY WIRE, RADIO, OR TELEVISION

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both. Added July 16, 1952, c. 879, § 18(a), 66 Stat. 722, and amended July 11, 1956, c. 561, 70 Stat. 523

## (G) CONCISE STATEMENT OF THE CASE

A. Appellant/petitioner James S. Singleton was indicted in the District of Hawaii in 2 separate causes - a violation of 18 U.S.C. 2314, a single count of alleged transportation of stolen airline tickets of value in excess of $5,000, and a later 6 count violation of 18 U.S.C. 1343 and 18 U.S.C. 2 - use of interstate wire to commit fraud. The initial indictment was ultimately dismissed and is not a part of this Petition for Certiorari.

The evidence most favorable to the government at trial showed that an unknown person pilfered blank ticket stock at an unknown time from the Hawaiian Island based air carrier, Hawaiian Airlines, and that petitioner Singleton thereafter personally hand-printed and filled in the tickets, applied a bogus airline validation stamp, and either then did one of two things:

(A) turned the tickets back to the airline for a cash refund, or

(B) sold the tickets to an unsuspecting purchaser, ostensibly for a discount, receiving cash for the transaction.

The purchaser then booked passage on either Pan-Am or United Airlines from Honolulu to the main land.

It was, and is evident that petitioner's scheme was successfully completed when he either turned the tickets back to the airline, receiving a cash refund, or sold the tickets to an unsuspecting purchaser, receiving cash.

The Government sought to predicate federal liability on petitioner Singleton by asserting that he somehow was liable for the acts of the purchasers of the stolen tickets when they booked passage on flights or exchanged the tickets for revalidated or new

tickets and thereby caused an interstate signal to be sent via the nationwide airline computer-information retrieval system to book passage and obtain a reservation/seat selection on the flight that they ultimately took.

Extensive trial evidence revealed that not even trained airline employees were aware of where competitive airlines central computer facilities were located. No airline ever told the public about its central computer facility when they booked passage for them.

No evidence at the trial showed who booked the flights for any of the 5 Counts petitioner was convicted on. Petitioner was acquitted on Count 6. On Counts 4 and 5, the purchasers of the bogus tickets, W. Love and J. Hall appeared at Honolulu airport and exchanged the tickets and boarded a San Francisco flight.

Count 1 involved a ticket used on June 3, 1978 on Pan American World Airways from Honolulu to San Francisco by one R. Bennet, the ostensible purchaser of Government

Exhibit 1, the ticket in question. A summary of the Government's evidence on this Count may be fairly said to be the following (R.T.A. = Reporter's Transcript on Appeal):

In June, 1978, Pan-Am had a centralized reservation system, located in Manhattan in the Pan-Am building, in New York City. (R.T.A. 99-100). It was a computerized reservation system with terminals in the various cities, and it functioned on telephone lines and communications satellites. The Honolulu airport had a terminal tied into the memory bank centralized system in New York City.

On June 3rd, 1978, Pan-Am had a morning flight from Honolulu to San Francisco. (R.T.A. 100). This was flight 842 (R.T.A. 101). Reservations for this flight could be made in various cities throughout the world. (R.T.A. 101). Some 12 hours before flight time, a trip preflight manifest is made up and transmitted to Honolulu, the point of departure. (R.T.A. 101) The agents check that trip

manifest with local passengers checking in. (R.T.A. 102). If the name was already on the manifest when the passenger arrived the check was merely comparing the name to the manifiest, but if the name was not on the manifest, the ticket information would be placed into the terminal and transmitted to New York City, but that would be done after the flight departed. (R.T.A. 103).

A fair summary of the above indicated that the government offered absolutely no proof that any interstate signal was sent to book passage on the Pan-Am Flight; that they could not show from what state said signal was sent; that they could not show who sent it; and that petitioner/appellant's role in the scheme ended successfully when he sold the ticket to R. Bennet for cash.

Petitioner could not care less whether the ticket was used or not, his goal in the fraud being completed upon his transfer of the ticket to R. Bennett for cash.

Counts 2 and 3 involved United Airlines flights and tickets used on United Flight 22 from Honolulu to New York City on July 14, 1978 and on United Flight 22 on September 5, 1978 from Honolulu to San Francisco, respectfully.

A fair summary of the facts concerning the use of Government Exhibits 2 and 3, the tickets concerning Counts 2 and 3 is as follows:

John D. Moore (R.T.A. 188) was a supervisor of passenger service for United Airlines in Honolulu, Hawaii, and was familiar with the check-in procedures for flights from Honolulu to the West Coast. (R.T.A. 189). Exhibit 2 was used on a United Flight 22, 1st class from Honolulu to New York on July 14, 1978.

United Airlines central reservation system is located in Denver, Colorado.

When a passenger checks in for a flight, the ticket is collected, examined and then a

computer entry is made querying the machine as o whether this person actually holds a reservation and, if so, assigning a seat to that person. (R.T.A. 191-192).

This would be done whether the passenger had made a prior reservation or not, because the "check-in" system and the "reservation system" are separate and distinct. (R.T.A. 193).

Exhibit 3 was used on UAL Flight 22 on September 5, 1978 from Honolulu to San Francisco. (R.T.A. 195). The check-in system was used although it could not be ascertained whether the registration system was (R.T.A. 195). The same failure of ascertainment of use of the reservation system applied to Government Exhibit 2. (R.T.A. 196-197). If anyone secured blank ticket stock, the entire face of the ticket could be filled in without use of any computer reservation system. (R.T.A. 197). The green ink indicating a seat assignment could also just be written on the ticket; no computer would have been necessary. (R.T.A. 198-201).

A United passenger seeking to board a Honolulu to Los Angeles flight would have no indication that a computer facility located in Denber, Colorado would be necessary in order to ascertain whether space would be available on the airplane setting right out on the runway in Honolulu; one would likely believe that locally the information would be available. (R.T.A. 205-208). United Airlines tells the ticket purchaser nothing about the checking in procedure.

On the other hand, if a Honolulu passenger wanted to check on the availability of a Chicago to New York flight at some future date, he might realize that some communication with the mainland would be necessary. (R.T.A. 208). Either direct or non-stop flights would require no additional checking, other than local, in the mind of the traveller, for no plane change is involved (Direct Flight means one or more stops, but no plane change; Non-stop means no stops at all, of course.) (R.T.A. 208-209).

Both Government 2 and 3 would convey to the public that local information would enable the traveller to get on the plane or not. (R.T.A. 209). John D. Moore, a United employee schooled and skilled in ticket/booking procedures did not know where American, T.W.A, Continental, Braniff, Pacific Southwest, Eastern or Pan American World Airways central computer facility was located and so he would believe that the general public would not know this information. (R.T.A. 209-210).

He believed Hawaiin Airlines, a fully intra island/intra state airline, would have its computer somewhere on one of the 8 islands. (R.T.A. 210-211).

He would believe that the public would have no knowledge about what state, if any, the central facility would be located in, and there would be no interstate wire communications involved in a direct or non-stop Honolulu to mainland flight. (R.T.A. 211).

A fair summary of the foregoing revealed that the Government could not and did not demonstrate who made the reservation on either of these flights, or from whence it came or from what state it may have been made. Some passenger, after acquiring the ticket from petitioner or some successor in the chain after petitioner had filled in the ticket, appeared in Honolulu on each of the occasions and boarded the plane. On this occasion, the interstate computer was used, sending a signal from Honolulu to Denver, United's central terminal, and return, selecting the seat for the passenger.

Petitioner's role in the scheme had been successfully achieved long prior when he sold the ticket to the purchaser. The sending of an interstate signal from Honolulu to Denver was neither a necessary nor integral part of the scheme.

Counts 4 and 5 are slightly different and involved United Airline passengers W.

Love and J. Hall who exchanged tickets previously filled in by hand by petitioner on stolen Hawaiian Airlines ticket blanks for two new tickets on the August 22, 1978, United Flight 22, departing at 11:10 P.M. from Honolulu to San Francisco. A fair summary of the use of these two tickets sold by petitioner to W. Love and J. Hall was presented by United Airlines ticket agent Roy Dahlin:

Roy Dahlin (R.T.A. 121) was with United Airlines Honolulu International Airport, as a passenger service agent. He was on duty on August 22, 1978, evening shift. (R.T.A. 122). On that date United Airlines had a flight 22 departing at 11:10 p.m. to San Francisco. He was involved with checking in 2 passengers called "W. Love" and "J. Hall". (R.T.A. 123). He did not see them physically together, but one presented 2 tickets and said the other one was "working on the bags". (R.T.A. 123-124). The check-in process required him to check the individual's "computer record" at the

central Denver, Colorado computer facility center, (R.T.A. 125), being transmitted by undersea cable from Hawaii to the mainland, and thence to Denver via telephone. (R.T.A. 126)..

This computer facility actually generates tickets with the desired trip itinerary. (R.T.A. 126-217). Exhibits 4A and 4B were so prepared, and they also indicated that they were exchanged for Hawaiian Airlines tickets issued 21 August. (R.T.A. 128-131). Exhibits 5A and 5B dealt with the companion tickets, (R.T.A. 132-134) for W. Love.

He did not know whether either Love or Hall was actually the ones who were at the airport since he did not ask them for identification. (R.T.A. 139-140). In fact, he saw but one person who said he had a companion.

The United fare was over $900 while the Hawaiian ticket had a value of $893.62, but he did not ask "Love" or "Hall" for additional money. (R.T.A. 142-143).

"Love" and "Hall" were not booked on the flight prior to coming to the airport and encountering Dahlin, but did hold reservations for the next day, August 23, 1978.

Dahlin, of course, did not know the identity of "Love" or Hall". (R.T.A. 146).

Dahlin never told "Love" or "Hall" that he was making a computer check that sent a signal to Denver, Colorado. (R.T.A. 146-147). Indeed, if one purchased a ticket in Denver no interstate signals would be involved, but the customer would not realize that at all. (R.T.A. 147-148).

Dahlin had "no idea" where the central computer was located for certain leading airline competitors and no posted signs nor advertising alerted individuals about locations of central computer information retrieval systems. (R.T.A. 148-149).

A fair summary of the foregoing showed that petitioner's scheme was successfully completed when he prepared a phony ticket for W. Love and J. Hall and sold it to them. Their subsequent appearance at Honolulu airport to revalidate/exchange the bogus ticket for a computer-generated new duo of tickets for the August 22, 1978 Honolulu-San Francisco flight was totally disjoint and was an aftermath to the successful sale for cash of the bogus pair of tickets.

The government failed to show any connection of petitioner Singleton to the sending or causing the sending of any interstate signal via airline ticket computers as a necessary scheme.

Unless the causing of the sending of the signal is an integral and necessary part of the fraudulent scheme, there can be no violation of 18 U.S.C. 1343 and 2. United States v. Giovengo, 637 F.2d 941 (3rd Cir. 1980); United States v. Tarnapol, 461 F.2d 466

(3rd Cir. 1977), Kann v. United States, 323 U.S. 88, 95, 65 S.Ct. 148, 151, 89 L. Ed 88 (1944); Pereira v. United States, 347 U.S. 1, 8, 74 S. Ct. 358, 362, 98 L. Ed 435 (1954); United States v. Holmes, 390 F. Supp. 1077 (.W.D. MO. 1975); United States v. Brown, 583 F. 2d 659, 664-44 (3rd Cir. 1978).

No conspiracy was alleged by the government linking petitioner to either named or unindicted co-conspirators. The role of appellant ended with the successful resale of the tickets to customers for cash or the return of them to Hawaiian Airlines for a cash refund. It should be noted that all of the tickets prepared by petitioner indicated that they were originally purchased for cash, which enabled their return to the airlines for an immediate cash refund. In the latter return, clearly no interstate computer is involved, and in the sale of the bogus tickets to an unsuspecting victim for cash, petitioner had successfully concluded and completed his scheme. "Indeed,

from petitioner's point of view, he probably would have preferred to have the (tickets) misplaced by the various (purchasers) and never used at all." Paraphrasing from United States v. Maze, 414 U.S. 395, 402, 94 S. Ct. 646, 649, 38 L. Ed. 2d 603 (1974).

Clearly, the sending of an interstate signal via the various airline computers, or the causing of the sending of a signal by airline employees to book flight reservations or obtain a seat selection for the unsuspecting purchasers of the tickets in Counts 1-5 was not a part of the successful fraudulent scheme.

Within the meaning of Unites States v. Maze, 414 U.S. 395, 94 S. Ct. 645, 38 L. Ed. 2d 604 (1974), the sending or causing the sending was not a necessary or integral fraud of the fraudulent scheme. At most, a state crime was committed in Hawaii which must be dealt with in the State Courts of Hawaii.

"The federal mail fraud statute (and by implication the wire fraud statute)

does not purport to reach all frauds, but only those limited instances in which the use of the mail is a part of the execution of the fraud, leaving all other cases to be dealt with by appropriate state law."

Kann v. United States, 323 U.S. 88, 95, 65 S. Ct. 148, 151, 89 L.Ed 88 (1944).

The United States Court of Appeals for the 9th Circuit refuses to analyze the instant case by the mandates of Maze and Kann and purports to embrace the District Court's erroneous finding of a Federal transgression of 18 U.S.C. 1343 where if said signals were sent at all they were sent by others much after petitioner had successfully completed his scheme of state law fraud violations in Hawaii.

To correct the erroneous rulings of the U.S. 9th Circuit in this case, companion to Maze and Kann in the wirefraud area, certiorari to the U.S. 9th Circuit should be granted.

B. The Warrantless Search of the Briefcase by a Trained Marijuana Detector Dog.

Petitioner Singleton was once married to one Lila Singleton; nearly two years before petitioner's 1978 arrest in the instant case at a Los Angeles hotel, in the parking lot, Lila had formally filed a complaint alleging petitioner had assaulted her; that on this date of the assault in late 1976, petitioner had allegedly possessed a vaguely described "brown briefcase" which allegedly had then contained a "white powder". Lila was never offered as an expert on "drugs" or "restricted compounds", nor was there any evidence proffered which shed light on petitioner's life-style or activities in the substantial two year gap between Lila's assault complaint and story about white powder in the brief case, a November, 1976 incident, and the arrest of appellant for the assault on or about October 12, 1978.

After appellant was arrested, he was taken

to a Los Angeles County Sheriff's substation where a dog trained to sniff out restricted compounds was allowed to smell the briefcase. The dog "alerted" on the brief case, and thereafter a search warrant was secured to search the briefcase, revealing a small quantity of marijuana and a substantial quantity of airline tickets, immediately leading to the charges at bar brought against petitioner in the U.S. District Court in Honolulu, Hawaii.

Under the facts of this case, absent the "search" of the briefcase by the dog, it is plain that law enforcement could not have secured a search warrant to search the briefcase because, inter alia, of the two years of staleness, and the full inability to conclude that the briefcase illegally seized from the petitioner and "searched" by the dog was the same briefcase seen by Lila two years previously, and that its contents upon the October 12, 1978 seizure were in any way the same as when Lila observed them in November

of 1976. Thus the dog was used to search the briefcase prior to securing the search warrant, and the warrantless search by the dog was the basis for the ultimately secured warrant.

The location of the manifold number of purloined tickets in the breifcase immediately focused Federal attention on petitioner, and ultimately led to the charges brought against petitioner.

This court has never examined the constitutionality of the use of trained canines to effect warrantless searches of private property in which there is a genuine and reasonable expectation of privacy. The case at bar presents the requirement to confront that issue, for no search warrant could have issued absent the information gleaned from the original olfactory search by the trained canine.

The location of the tickets led to petitioner's indictment.

Petitioner asserts that the use of a trained detector dog to perform an olfactory

search of a briefcase where otherwise insufficient probable cause existed to secure a search warrant under Aguilar v. Texas, 378 U.S. 108 and Spinelli v. United States, 393 U.S. 410 violates the rights of American citizens under the 4th and 5th Amendments, and violates the reasonable expectation of privacy afforded under the decisions of this Honorable Court in United States v. Chadwick, 433 U.S. 1, Arkansas v. Sanders, 442 U.S. 753 and Robbins v. California, ____ U.S. _____ .

Certiorari should be granted in this issue of first national impression in this Court.

## (I) BASIS FOR FEDERAL JURISDICTION.

This Court has jurisdiction to entertain a Petition for Certiorari from a final decision of a U.S. Circuit Court where Federal jurisdiction began in the U.S. District Court by an indictment charging violations of 18 U.S.C. 1343 and 2.

## (J) ARGUMENT I

WITHIN THE MEANING OF UNITED STATES V. MAZE, 414 U.S. 395, 402, 94 S. Ct. 645, 649, 38 L Ed. 2d 603 (1974), AND KANN V. UNITED STATES, 323 U.S. 88, 95, 65 S. CT. 148, 161, 89 L Ed. 88 (1944) AND IN CONTRAST TO UNITED STATES V. GIOVENGO, 637 F. 2d 941 (3rd Cir. 1980), AND THE CITED AUTHORITIES, THE USE OF THE INTERSTATE WIRE HAD NO CONNECTION TO PETITIONER'S FRAUD, WHICH WAS COMPLETED MUCH BEFORE ANY INTERSTATE WIRE WAS SENT, BY THE SALE OF THE STOLEN TICKETS OR THE RETURN OF THE TICKETS FOR CASH TO THE AIRLINES. AS SUCH, PETITIONER'S CONVICTION OF A FEDERAL CRIME IS NOT ABLE TO STAND; AT MOST, HAWAII STATE FRAUD STATUTES WERE VIOLATED. CERTIORARI SHOULD BE GRANTED IN THIS FEDERAL WIRE-FRAUD CASE WHICH CARRIES THE SAME PRINCIPAL OF LAW ENUNCIATED IN THE FEDERAL MAIL FRAUD CASE OF UNITED STATES V. MAZE, 414 U.S. 395.

The opinion of the United States 9th Circuit, set forth as Appendix "A", is sparse on analysis of the issue of this appeal and certiorari petition:

Whether petitioner's clearly State of Hawaii fraudulent act in the theft and resale of airline tickets, completed successfully upon the transfer of the money and the tickets, somehow blossomed into a violation of 18 U.S.C. 1343, the Federal Wire Fraud Statute, because the private purchasers of the tickets eventually booked passage on an airline, by actuating an interstate wire signal in the computer, in order to obtain a seat or reservation?

The undisputed facts adduced at trial before visiting U.S. District Judge Myron D. Crocker of Fresno, California, sitting in Honolulu, Hawaii were that:

(1). At times in 1978, the Hawaiian based air carrier, Hawaaiian Airlines, discovered missing blank ticket stock at certain of its airline ticket offices.

No evidence showed directly who may have pilfered the blank stock.

(2). Petitioner Singleton was arrested for another misdemeanor offense and his briefcase was subject to a search by a marijuana-sniffing detector dog, who alerted on the case. A search warrant was procured to open the case, discovering several airline tickets connected to Hawaiian Airlines in addition to a small amount of marijuana.

(3) Hawaiian Airlines accounting office in Honolulu began receiving back used airline tickets made out to various individuals which were shown to have been made out in the handprinting of petitioner Singleton. These were made out to "W. LOVE", "J. HALL", "R. BENNETT", and other individuals who purchased the stolen and forged tickets from petitioner with cash. Other tickets were returned back to the airlines for cash refunds.

Six of these tickets were the subject of the instant prosecution, one used on Pan-American, four used on United Airlines and one used on Western Airlines. As to the latter ticket, the subject of Count 6 of the Indictment, the petitioner was acquitted by the Court.

Plainly, petitioner was a committer of a state fraud of significant magnitude, which was successfully completed and integrally achieved by the sale of the stolen tickets for cash either back to the airlines or to unsuspecting customers in the private sector.

The Federal Government sought to predicate Federal Jurisdiction under 18 U.S.C. 1343 and 2 by asserting that petitioner could reasonably foresee that the recipients of his stolen tickets would eventually use these tickets on a flight and that petitioner ought to have realized that <u>these individuals</u> eventually would cause airline employees to actuate an interestate wire communication to book passage/

reservation on the flight. Unquestionably, this is one prong of the inquiry, for as this Honorable Court said in United States v. Maze, 414 U.S. 395, 38 L. Ed. 2d 603, 94 S. Ct. 645 (1974), at 414 U.S. 399:

> "In Pereira v. United States, 347 U.S. 1, 8-9, 74 S.Ct. 358, 363, 98 L.Ed. 435 (1954), the Court held that one 'causes' the mails to be used where he 'does an act with knowledge that the use of the mails will follow in the ordinary course of business or where such use can reasonably be forseen, even though not actually intended...' We assume as did the Court of Appeals, that the evidence would support a finding by the jury that Maze 'caused' the mailings of the invoices he signed from the out-of-state motels to the Louisville bank. But the more difficult question is whether these mailings were sufficiently closely related to respondent's scheme to bring his conduct with the statute."

However, that does not end the legal/factual inquiry for the Government must successfully demonstrate that petitioner's scheme brought his conduct within the statute.

That second inquiry brings grief to the government, for the scheme entered into by

petitioner, the stealing and resale of the tickets, culminated succsssfully long before private individual purchasers began their odyssey by appearing at an airline ticket counter to book passage on a flight, thus indirectly causing a wire signal to be sent to select a seat or check on flight availability.

Petitioner's goal of making money by fraudulent theft and resale of the tickets was not at all dependent upon whom bore the ultimate loss; thus the purchasers could lose the tickets and not enjoy their flight, and thus suffer the loss, or alternately the flight could be made, thus sticking the airline carrier for a free flight on a fraudulent ticket. But plainly the goal of the petitioner Singleton was achieved independent of whether a flight was ever booked or not, and independent of who suffered the loss.

In this Court's analysis in U.S.A. v. Maze, 414 U.S. 395, it was made clear that Maze's goal of "ripping off" motels and other

merchants with fraudulent and stolen credit cards was achieved when he successfully obtained the merchandise. Maze did not care whether the victim merchants mailed the vouchers in to the supporting bank or not, and if they did thus shifting the loss to the Bank. While Maze could well anticipate that the use of the mails would follow from his activity, his achievement of success in his scheme was not dependent upon the U.S. Mail being used as a conveyor of the vouchers.

In a like manner, petitioner achieved his goal ahead of and quite independent of whether the purchaser ever used the ticket.

A state thief of rather signigicant magnitude in the State of Hawaii he was, but he was not a transgressor of 18 U.S.C. 1343 and 2 under the scenario of this case.

The stark contrast in how the airline computer and an interstate signal were inextricably bound into a defendants fraud scheme in a way that the scheme would not have burgeoned

were it not for the computer graphically shows the difference with the case at bar.

A recent case decided by the 3rd Circuit, United States v. Giovengo, 637 F. 2d 941 (3rd Cir. 1980) illustrates the integral use of the interstate computer system in committing a grand theft fraud against an airline by transgression of the Federal Wire Fraud Statute, 18 U.S.C. 1343.

It is to be contrasted to the instant case where appellant's scheme to steal airline ticket blanks, fill them in and then either turn them back to the airline for a full cash refund or sell them to others achieved full climax and satisfaction prior to and fully without the use of airline computer systems.

In Giovengo, supra, a dynamic duo consisting of Giovengo, a ticket seller and Paladino, who assisted passengers boarding the aircraft, both worked for TWA at the Greater Pittsburgh, PA, airport.

The fraud scheme worked as follows:

A cash-paying customer purchased a one-way ticket from Giovengo, who utilized the TWA Kansas City based computer terminal to issue the ticket and make a seat selection. The local Pittsburgh computer terminal regurgitated the ticket, consisting of several copies in addition to the actual flight coupon. The passenger was given a cash voucher slip, one of the copies produced by the computer, and used this to go to the boarding area where Paladino, by a pre-arranged communication from Giovengo helped the passenger board the aircraft and who then retrieved the cash voucher. Later Giovengo and Paladino reassembled the non-used ticket, marked it void, and returned it to TWA's accounting office for routine nullification as a non-used, voided ticket.

The pair then divided the cash originally pocketed by Giovengo.

Plainly, the team could not have generated the ticket, obtained a seat selection, got the passenger aboard the plane, and retrieved a

non-useable flight coupon from the unsuspecting passenger save for the use of the computer on each and every occasion. The computer itself generated the ticket which they would never have had access to unless it was used in this manner as well as to simultaneously select the seat. Thus, it is plainly and saliently an inescapable and integral part in the scheme.

However, in the case at bar, appellant's scheme came to an end whether he turned the self-generated ticket in for a full cash refund or if he sold the ticket for a cash discount to an unsuspecting purchaser. In fact, appellant could not care less if the purchaser ever used the ticket, and in fact possibly would be pleased if the purchaser lost the ticket prior to use. Importantly, the scheme ended prior to the use of the computer, if it was used at all in some of the counts, for appellant's goal was simply the money obtained prior to and fully without the use of the computer. The blank ticket stock was stolen; it was filled

in by appellant by hand-printing, and a bogus stamp was affixed. The date for the flight came from a readily-available timetable, and airline fares are readily available to anyone who asks at the counter. Importantly and clearly, then, the scheme came to a successful end much prior to any purchaser at some later time seeking to use the ticket by booking passage which might actuate the interstate computer.

The teachings of Giovengo, supra, show the impossibility of that scheme working absent use of the computer, and the clear lesson is that appellant Singleton perfected his scheme as a simple state grand theft that successfully ended by resale of the ticket or return of it to Hawaiian Airlines for cash. No interstate wire was a part of appellant's state committed grand theft and appellant was no part of any scheme to book flight passage on the airlines via a computer. It is necessary that this court realize that the Government was to never establish who booked passage or used any ticket

and save for counts 4 and 5, could not show even in what state the passage was booked in. Counts 4 and 5, of course, were shown to be booked in Honolulu, but the person making the booking and taking the flight was never identified whatsoever. It was a "W. LOVE" and a "J. HALL" that commenced their Honolulu-San Francisco sojourn on the purchased ticket by reconverting it to a new ticket at the airport. Petitioner had long previously dropped out of sight and had no role in the causing of the interstate signal. His successful theft had already been accomplished.

Therefore, no Federal crime recognizeable under the reasoning of United States v. Maze 414 U.S. 395 was here committed; certiorari should be granted to resolve this serious issue and further clarify the law in this area.

## ARGUMENT II

THE DOG USED IN THIS CASE PERFORMED A WARRANTLESS SEARCH OF THE BRIEFCASE CARRIED BY PETITIONER AT THE TIME OF HIS ARREST; THE STATE OF CALIFORNIA EFFECTED A SEARCH OF AN ITEM OF PERSONALTY IN WHICH THERE WAS A REASONABLE EXPECTATION OF PRIVACY, BY A TRAINED DOG WITHOUT WARRANT, IN VIOLATION OF UNITED STATES V. CHADWICK, 433 U.S. 1, ARKANSAS V. SANDERS, 442 U.S. 753, AND ROBBINS V. CALIFORNIA, U.S. , 99 S. Ct. 2586, 61 L.Ed. 2d 235; ABSENT SUCH ARTICULATION SATISFYING THE DUAL PRONGS OF AGUILAR V. TEXAS, 378 U.S. 108, AND SPINELLI V. UNITED STATES, 393 U.S. 410, LAW ENFORCEMENT CANNOT CARRY OUT WARRANTLESS SEARCHES OF THESE ITEMS BY DOGS OR OTHER SCIENTIFIC "X-RAY" DEVICES. ABSENT SPECIFIC COMPLIANCE WITH THE AGUILAR-SPINELLI MANDATES, THE USE OF THE TRAINED DOG TO SEARCH A PERSONAL BRIEFCASE CONSTITUTES A GENERALIZED

SEARCH AND SEIZURE CONDEMNED BY THE UNITED STATES CONSTITUTION.

It is now well established that dogs can be trained to detect marijuana, other controlled substances, explosives, and other contraband of concern allegedly possessed by smugglers, when that trained dog is placed in the immediate proximity of the offending container. Generally said, a human could not perform at the intensified olfactory capabilities of the dog, and thus the law enforcement agencies would possess no facts nor evidence whatsoever upon who to seek a warrant to search such luggage or items of personalty which the decisions of this Honorable Court have accorded a reasonable expectation of privacy within, absent the use of the dog. In effect, then, the dog is used to perform a warrantless search of a closed container in violation of the Chadwick-Sanders-Robbins trilogy promulgated by this Honorable Court.

It is apparent that the use of said dogs to provide information that could not otherwise be gleaned constitutes an illegal, warrantless search, and violates the rights of this petitioner under the 4th Amendment and, under the concept of reasonable expectation of privacy.

Certiorari should be granted to resolve this key and serious national issue.

## CONCLUSIONS

For the two major issues and errors in this case, viz:

(A) The hitherto undecided constitutionality of the use of trained detector dogs to perform warrantless searches of items in which exists a reasonable expectation of privacy, and

(B) The illegal filing of 18 U.S.C. 1343 Federal wirefraud charges in a state crime case where the modus operandi had achieved success and culmination prior to and without use of interstate wire, within the meaning of United States v. Maze, 414 U.S. 395.

Certiorari should be granted to the United States Court of Appeals for the 9th Circuit.

Respectfully submitted,

ROGER S. HANSON, ESQ.
Attorney for the Petitioner
Member of the Bar
Supreme Court of the
United States

(NOT FOR PUBLICATION)

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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|---|---|
| UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JAMES S. SINGLETON, Defendant-Appellant. | No. 81-1072<br>D.C. CR. No. 80-00976<br>MEMORANDUM |

Appeal from the United States District Court
For the District of Hawaii
Myron D. Crocker, District Judge, Presiding*
Argued and Submitted December 16, 1981

Before: SNEED and PREGERSON, Circuit Judges, and EAST,** District Judge

Singleton appeals from a judgment of conviction and sentence entered by the District Court following a court trial on five counts of wire fraud in violation of 18 U.S.C. § 1343

*Honorable Myron D. Crocker, Senior District Judge for the Eastern District of California, sitting by designation.

**Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.



APPENDIX A

and 18 U.S.C. § 2.

The appellant was found to have stolen blank airline tickets from Hawaiian Airlines, filled in the required information, and then turned the forged tickets in to other airlines in return for reservations on less expensive flights and partial cash refunds.

The District Court imposed a sentence of three years in custody on each count, to be served concurrently.

I. FAILURE TO RULE ON MOTION TO SUPPRESS

Appellant first contends that the District Court erred in failing to rule on a motion to suppress evidence prior to rendering a judgment and in admitting evidence obtained as a result of an illegal search of his briefcase. Singleton made the motion to suppress the evidence in a related prosecution, and then renewed his motion in the instant case. The parties agreed to abide by the ruling in the related case. The present case proceeded to trial before the motion was

decided, and the District Court in the present case agreed to treat the motion to suppress as if it had been granted. The indictment in the prior case was then dismissed before any final order was issued on the motion.

Although such a course is not preferred, the District Court has the power under Fed. R. Crim. P. 12(e) to defer the determination of the merits of a motion to suppress until the time of trial or after the verdict, unless such a deferral would adversely affect a party's right to appeal. See United States v. Thompson, 558 F.2d 522, 525 (9th Cir. 1977), cert. denied, 435 U.S. 914 (1978). The fact of this appeal indicates that appellant's right was not adversely affected by the District Court's failure to make a final ruling on the motion to suppress, and Singleton did not suffer any prejudice that would render the court's failure to decide the motion "plain error" under Fed. R. Crim. P. 52(b). The District Court in the instant case agreed to

treat the motion to suppress as if it had been granted. Thus, in effect, the appellant was successful in his bid to have a portion of the Government's evidence excluded. Furthermore, the evidence on the record reveals that the challenged evidence was not obtained as a result of the allegedly illegal briefcase search, and thus the District Court's decision to admit it was not "clearly erroneous." United States v. Botero, 589 F.2d 430, 433 (9th Cir. 1978), cert. denied, 441 U.S. 944 (1979); United States v. Dubrofsky, 581 F.2d 208, 212 (9th Cir. 1978).

II. LEGALITY OF BRIEFCASE SEARCH

Singleton next claims that the search of his briefcase was illegal (1) because the magistrate erroneously applied federal rather than state law in evaluating the legality of the search, (2) because his rights were violated during booking procedures after his arrest, (3) because the examination of his briefcase by a dog trained to detect narcotics

constituted an illegal search, and (4) because no probable cause existed for the search warrant. We first note that by treating Singleton's motion to suppress as if it had been granted, the District Court did in effect treat the briefcase search as if it had been illegal. Thus, the appellant was not prejudiced in any way at trial, even if the search did violate the Fourth Amendment. Moreover, we conclude that appellant's grounds for invalidating the search lack merit.

The rule is clearly established that the federal district courts will decide evidence questions on the basis of federal rather than state law. Thus, the magistrate correctly applied federal standards in evaluating the merits of the state warrant. See, e.g. United States v. Hall, 543 F.2d 1229, 1231-32 (9th Cir. 1976), cert. denied, 429 U.S. 1075 (1977) (federal wiretapping law preempts state law). Furthermore, Singleton's rights were not infringed by the fact that he was booked

prior to being brought before a magistrate, 50 Calif. Code Ann. § 850 (West), and we find sufficient evidence in the record to support the District Court's finding that appellant was not denied any right to post bail. In any case, any infringement of appellant's rights during booking proceedings would not invalidate the search of his briefcase, made pursuant to a warrant.

We further conclude that the examination of Singleton's briefcase by dogs trained to detect narcotics did not violate the Fourth Amendment. The use of such animals is recognized as an acceptable law enforcement tool to cooroborate a suspicion of the presence of contraband, and is not considered intrusive on an individual's right against unlawful searches. United States v. Solis, 536 F.2d 880 (9th Cir. 1976). The record in this case clearly shows that the sheriffs had sufficient grounds to believe that the briefcase might contain contraband before

they made use of the trained dog.

Finally, we hold that the District Court was correct in finding that the search warrant for the briefcase was adequately supported by an affidavit sufficient to establish probable cause under the Fourth Amendment. Berger v. New York, 388 U.S. 41, 55 (1967).

III. SUFFICIENCY OF THE EVIDENCE UNDER 18 U.S.C. § 1343

The appellant lastly contends that the evidence on the record is insufficient to support his conviction under 18 U.S.C. § 1343 because the Government failed to prove beyond a reasonable doubt that he knew or should have reasonably foreseen that he would cause an interstate wire communication to be sent by his fraudulent use of the airline reservation system. Singleton argues that, as a general passenger, he should not have reasonably been expected to know that the mail computer of the airlines' reservation system was located in a state other than the

the one in which he made the reservations, especially when booking reservations in the city of origin of non-stop flights.

We note that appellant stole over $25,000 worth of blank airline tickets and executed his fraudulent airline ticket scheme at least six times over the course of several months, thereby illegally obtaining over $5,000 in cash refunds in addition to unpaid-for flights. In order to carry out his scam successfully, Singleton had to know of the intricacies of the airlines' ticketing methods; the appellant did not stand in the shoes of a general passenger, but of one with considerable expertise in the operations of the airlines' reservations system. It should have been at least reasonably foreseeable to Singleton that his reserving passage on an airline would involve the transmission of an interstate wire communication.

Moreover, we note that even general passengers without appellant's special know-

ledge of the airlines' ticketing operation know that flights which they may take directly from one point to another often continue on to additional destinations. It is apparent that the airlines must transmit information regarding reserved bookings and seating availability to the flight's stopping points or to sell seats to passengers along the flight's various stops. Thus, construing the facts in the light most favorable to the Government, United States v. Goldstein, 532 F.2d 1305, 1316 (9th Cir.), cert. denied, 429 U.S. 960 (1976), we conclude that there was substantial evidence before the District Court to support a finding that Singleton knew or reasonably could have foreseen that his scheme to defraud the airlines would cause an interstate wire communication to be sent. Pereira v. United States, 347 U.S. 1, 8-9 (1954); United States v. Kenofskey, 243 U.S. 440 (1917).

The District Court's judgment of conviction and sentence is affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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|---|---|
| UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JAMES S. SINGLETON, Defendant-Appellant. | No. 81-1072 ORDER |

Before: SNEED and PREGERSON, Circuit Judges, and EAST*, District Judge

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

*Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

PROOF OF SERVICE BY MAIL
(1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA )
) ss.
COUNTY OF ORANGE )

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 518 South Broadway, Santa Ana, CA 92701. On May 14, 1982, I served the within Petition for Writ of Certiorari on the interested parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Fort Worth, Texas addressed as follows:

Elliott Enoki, U.S. Attorney
U.S. Courthouse
Honolulu, Hawaii

Samuel King, U.S. District Judge
U.S. Courthouse
Honolulu, Hawaii

U.S. Solicitor General
Washington, D.C.

I further certify that forty (40) printed copies of this petition was placed in the United States Mail at Fort Worth, Texas together with the Two Hundred Dollars ($200.00) filing fee addressed:

Clerk, U.S. Supreme Court
Washington, D.C. 20543

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 14, 1982

ROGER S. HANSON
Member of United States
Supreme Bar